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**From: Board of Patent Appeals
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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte MASARU MIZUTANI

Appeal 2007-2640
Application 09/933,517
Technology Center 3600

Decided: September 13, 2007

Before ERIC GRIMES, LORA M. GREEN, and RICHARD M.
LEBOVITZ, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 8-29
and 44. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF CASE

Claims 8-29 and 44, which are all the pending claims, are on appeal.
The following rejections are appealed in this proceeding (Answer 3-7):

1) Claims 8-10, 16, 18, and 44 stand rejected under 35 U.S.C. §
103(a) as obvious over Meilahn (US 5,762,024, issued Jun. 9, 1998) in view
of Iseki (English translation of “Effect of Artificial Upwelling on Primary

Production In Toyama Bay Japan,” published 1994), Nomura (English translation of “Treatment of Atopy Skin Inflammation by Deep Sea Water,” published 1995), and Miyamoto (English translation of “High Degree of Application for Deep Sea Water In Fishing Ports,” published 1999);

2) Claims 11-13 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Mougin (US 4,166,363, issued Sep. 4, 1979);

3) Claim 14 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Sibinski (US 2,641,221, issued Jun. 9, 1953);

4) Claims 15, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Mougin and Sibinski;

5) Claim 20 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Puncochar (US 3,571,819, issued Mar. 23, 1971);

6) Claim 21 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Mougin, Sibinski, and Puncochar;

7) Claims 22 and 24 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of O’Sullivan (US 5,929,538, issued Jul. 27, 1999);

8) Claims 23 and 25 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Mougin, Sibinski, Puncochar, and O’Sullivan;

9) Claim 26 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Atwell (US 4,536,257, issued Aug. 20, 1985);

10) Claim 27 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, and further in view of Mougin, Sibinski, Puncochar, O'Sullivan, and Atwell;

11) Claim 28 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Rolfson (US 3,764,015, issued Oct. 9, 1973);

12) Claim 29 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mougin, Sibinski, Puncochar, O'Sullivan, Atwell, and Rolfson; and

13) Claims 8-29 and 44 stand rejected under 35 U.S.C. § 112, first paragraph, as lacking a written description.

The following claims are representative of the rejected claims:

8. A sea-water swimming pool, comprising:
a swimming pool structure floating on a sea; and
means for collecting and supplying deep-sea water
to the swimming pool structure, wherein surface-sea water and
aquatic animals are substantially excluded from said swimming
pool structure.

11. The sea-water swimming pool of Claim 8, further
comprising a propulsion device.

14. The sea-water swimming pool of Claim 8, further
comprising a plurality of extensions protruding from said
swimming pool structure and adapted to protect the swimming
pool from attacks by sea creatures.

15. The sea-water swimming pool of [Claim 8 comprising a mooring means and a propulsion device] . . . , further comprising a plurality of extensions protruding from said swimming pool structure and adapted to protect the swimming pool from attacks by sea creatures.

20. The sea-water swimming pool of Claim 8, further comprising means for generating and mixing air bubbles into the deep-sea water supplied to said swimming pool.

21. The sea-water swimming pool of [Claim 15 comprising a facility for enabling fishing from the side of said swimming pool structure], further comprising means for generating and mixing air bubbles into the deep-sea water supplied to said swimming pool.

22. The sea-water swimming pool of Claim 8, further comprising means for solar power generation.

23. The sea-water swimming pool of Claim 21, further comprising means for solar power generation.

24. The sea-water swimming pool of Claim 8, further comprising means for wind power generation.

25. The sea-water swimming pool of Claim 23, further comprising means for wind power generation.

26. The sea-water swimming pool of Claim 8, further comprising a sea-water desalination plant.

27. The sea-water swimming pool of Claim 25, further comprising a sea-water desalination plant.

28. The sea-water swimming pool of Claim 8, wherein said means for collecting and supplying deep-sea water to the swimming pool structure includes a check valve which only allows an upward flow of the deep-sea water.

29. The sea-water swimming pool of Claim 27, wherein said means for collecting and supplying deep-sea water to the swimming pool structure includes a check valve which only allows an upward flow of the deep-sea water.

44. A sea-water swimming pool, comprising:
a swimming pool structure; and
means for collecting and supplying deep-sea water to the swimming pool structure, wherein surface-sea water and aquatic animals are substantially excluded from said swimming pool structure.

DISCUSSION

Rejection over Meilahn in view of Iseki, Nomura, and Miyamoto

Claims 8-10, 16, 18, and 44 stand rejected over Meilahn in view of Iseki, Nomura, and Miyamoto.

Meilahn describes an aquaculture system for growing aquatic animals which comprises “[a] rigid-walled floating tank . . . positioned in a body of water” (Meilahn, at Abstract and Fig. 3). “The tank has a cylindrical section that creates a primary zone wherein the aquatic animals live and grow” (Meilahn, at col. 2, ll. 1-2). “[T]he tanks may be sized to any desired configuration” (Meilahn, at col. 3, ll. 36-37). “[I]n a preferred embodiment each of the tanks has an inner diameter of 18 meters and a sidewall height of 8.5 meters” (Meilahn, at col. 3, ll. 37-39). The body of water may be either fresh or salt (Meilahn, at col. 3, ll. 30-32). A pump assembly is provided for drawing in water from the body of water and discharging water from the tank via an outlet (Meilahn, col. 4, ll. 18-35). “[W]ater may be drawn from different depths, such that water that is free of surface contaminants . . . is provided to the tank” (Meilahn, col. 4, ll. 39-42).

The Examiner contends that Meilahn's aquaculture floating tank, equipped with a pump assembly for drawing water from different depths, meets the limitations of claim 8 of a "swimming pool structure floating on a sea" and "means for collecting and supplying" sea water to the swimming pool structure that would exclude surface sea water and aquatic animals (Answer 8-9). The Examiner further contends that it would have been obvious to one of ordinary skill in the art to have supplied deep sea water¹ to Meilahn's floating tank in view of Iseki's and Miyamoto's teachings of the advantages of deep seawater for aquaculture and Nomura's teaching of deep seawater obtained from pumping stations for the treatment of atopic skin inflammation (Answer 10).

It is the Examiner's burden to establish prima facie obviousness. Obviousness requires a teaching or suggestion of all the elements in a claim (*In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000)) and "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007). Once prima facie obviousness has been established, the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument. *Hyatt v. Dudas*, 492 F.3d 1365, 1369-70, 83 USPQ2d 1373, 1375-76 (Fed. Cir. 2007). Here, we find that the Examiner has identified all the elements of claims 8 and 44, and provided a logical reason that would have prompted the skilled worker to have combined them

¹ Claim 8 recites that the means is for "supplying deep-sea water."

to achieve the claimed invention. Thus, the Examiner has properly shifted the burden to Appellant to provide rebuttal evidence or arguments.

Appellant argues that “the ‘swimming pool’ of Meilahn is really a tank ‘for growing aquatic animals’ (see column 1, lines 5-6)” and that the Examiner’s broad interpretation of the recited “swimming pool” limitation is unreasonable” (Reply Br. 8-9).

We find that the Examiner has the better argument. During prosecution, claim terms are given their broadest reasonable interpretation as they would be understood by persons of ordinary skill in the art in the context of the specification. The Specification does not provide a specific definition of a “swimming pool structure,” but it states that “any shape, for example cylindrical or cubical, can be adopted as far as it floats on the sea” (Spec. 9: 20-25). In view of this disclosure, it is our opinion that the Examiner reasonably interpreted “swimming pool structure” broadly to cover Meilahn’s cylindrical rigid walled tank having preferred dimensions of 18 meters wide and 8.5 meters high (Meilahn, at Abstract, col. 2, ll. 1-2, and col. 3, ll. 37-39). Appellant has not identified any structure in Meilahn’s tank that would make it unsuitable for swimming.

Appellant contends that the claimed swimming pool substantially excludes aquatic animals (Reply Br. 10-11), but does not explain how this exclusion is represented in claims 8 or 44 by a structural feature that would distinguish the claimed swimming pool structure from Meilahn’s tank. Thus, we do not find this argument persuasive.

In setting forth the case of prima facie obviousness, the Examiner relied on three different references – Iseki, Nomura, and Miyamoto – for providing the motivation to have utilized deep sea water in Meilahn’s tank.

We find that Miyamoto's teaching of the advantages of deep sea water for aquaculture (Miyamoto, at 2) is alone sufficient to have established a reason to have modified Meilahn's aquaculture tank by pumping deep sea water into it, especially in view of Meilahn's disclosure that "water may be drawn from different depths, such that water that is free of surface contaminants . . . is provided to the tank" (Meilahn, col. 4, ll. 39-42). Thus, we do not consider it necessary to address the additional teachings of Iseki and Nomura.

Appellant contends that "Miyamoto's pool is adapted for raising fish by including heating and cooling equipment (see pp. 9-10 . . .) to keep the water temperature from getting to[o] high or too low for the fish. The applicant is not aware of any swimming pool that contains such specialized equipment for both heating and cooling" (Reply Br. 10).

We do not find this argument persuasive. The Examiner relied upon Miyamoto for its teaching of the advantages of deep seawater (Answer 10). Therefore, while Miyamoto describe regulating the temperature of the water in the tank, this teaching does not detract from its other disclosure about the benefit of deep seawater in aquaculture and its relevance to Meilahn, which also relates to the field of aquaculture. Furthermore, Miyamoto does not require heating and cooling equipment as stated by Appellant. Miyamoto merely indicates that the water may be cooled or heated depending on the type of fish cultured (Miyamoto, at 2).

Appellant also argues that "one skilled in the art of swimming pool design and construction would have no motivation to look to fish hatchery literature to solve swimming pool-related problems" (Reply Br. 10). We are not convinced. "In determining whether the subject matter of a patent claim

is obvious, neither the particular motivation nor the avowed purpose of the patentee controls.” *KSR*, 127 S. Ct. at 1741-42, 82 USPQ2d at 1397. *See also In re Dillon*, 919 F.2d 688, 693, 16 USPQ2d 1897, 1902 (Fed. Cir. 1990) (en banc); *In re Lintner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972) (“The fact that [applicant] uses sugar for a different purpose does not alter the conclusion that its use in a prior art composition would be prima facie obvious from the purpose disclosed in the references.”). Thus, as long as there is a reason for combining the references to achieve the claimed invention, the rejection is sound, even when the reason for the combination differs from Appellant’s own. In this case, Miyamoto teaches the benefit of deep sea-water for aquaculture and Meilahn teaches an aquaculture tank; thus, the skilled worker would have been motivated to fill Meilahn’s tank with deep-sea water in order to improve fish yield.

For the foregoing reasons, we affirm the rejection of claims 8 and 44. Claims 9, 10, 16, and 18 fall with claims 8 and 44 because separate reasons for their patentability were not provided.

Rejection over Mougin

Claims 11-13 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mougin.

Claim 11 is drawn to the sea-water swimming pool of claim 8 which further comprises “a propulsion device.” The Examiner contends that it would have been obvious to outfit Meilahn’s tank with a “propulsion unit as taught by Mougin . . . to facilitate relocation of the swimming pool structure within a body of water” (Answer 11-12). Appellant contends that “none of

the cited references disclose a swimming pool structure containing deep-sea water as recited in the claims (Reply Br. 11).

The Examiner's reference to a "swimming pool structure" (Answer 11-12) is clearly a reference to Meilahn's aquaculture tank which we have found meets the limitation in claim 8 of a "swimming pool structure." The Examiner provides a reasonable explanation as to why a person of skill in the art would have been prompted to outfit Meilahn's tank with a propulsion device: to relocate it within a body of water. We agree with this reasoning since Meilahn teaches that its aquaculture system is "independent of land and may be positioned at any desired location" (Meilahn, abstract). Thus, we affirm the rejection of claim 11. Claims 12 and 13 fall with claim 11 because their patentability was not separately addressed.

Rejections over Sibinski

Claim 14 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Sibinski.

Claims 15, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mouglin and Sibinski.

Claims 14 and 15 are drawn to the sea-water swimming pool of claim 8 which further comprises "a plurality of extensions protruding from said swimming pool structure and adapted to protect the swimming pool from attacks by sea creatures."

The Examiner finds that Sibinski teaches the use of a plurality of extensions to protect a structure from attack by fish (Answer 12). The

Examiner contends that it would have been obvious to modify the device disclosed by Meilahn with the plurality of extensions as taught by Sibinski “to impede the movement of fish approaching the swimming pool structure” (Answer 13).

Appellant contends that “the use of pins to impede the swimming of fish near freshwater dams in no way suggests or motivates one of ordinary skill in the art to attach an appendage to swimming pool structure harboring deep-sea water for protection against attacks by sea creatures” (Reply Br. 13).

We are not persuaded that the Examiner erred in concluding that claims 14 and 15 are further obvious in view of Sibinski. Meilahn does not expressly state that its aquaculture tank requires protection from invading fish present in the waters which surround the tank. However, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art. “[T]he teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. . . . The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Here, Meilahn’s tank is for creating a defined environment for aquatic animals (Meilahn, at col. 3, ll. 5-12). Consequently, it is reasonable to conclude that the skilled person would want to exclude alien animals living in the surrounding waters from invading the defined environment.

Sibinski teaches a simple solution: pins to prevent fish from leaping over a dam (Sibinski, at col. 1, ll. 31). We agree with the Examiner that a person of ordinary skill in the art would have found Sibinski's solution for dams reasonably pertinent to Meilahn's deep sea water tank because both are present in the same environment and exposed to the same risks. *See In re Clay*, 966 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992) (The two criteria for evaluating whether a reference is sufficiently analogous to the invention are "(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.").

For the foregoing reasons, we affirm the rejections of claims 14 and 15. Claims 17 and 19 fall with claims 14 and 15 because they were not separately argued.

Rejections over Puncochar

Claim 20 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Puncochar.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mougin, Sibinski, and Puncochar.

Claims 20 and 21 are drawn to the swimming pool of claim 8 which further comprises "means for generating and mixing air bubbles into the deep-sea water supplied" to the swimming pool.

The Examiner finds that Puncochar teaches a means for generating and mixing air bubbles in water (Answer 16). The Examiner contends that, based on Meilahn's disclosure of "the desirability of aeration in tanks (col. 5, lines 26 and 30)" (Answer 16), persons of ordinary skill in the art would have been motivated to include such "means in the pool structure for dissolving oxygen as desired" (Answer 17).

Appellant contends that "Puncochar does *not* disclose mixing bubbles into *deep-sea* water. Moreover, the Puncochar swimming pool consists of screens that allow surface sea-water to freely diffuse in and out of the pool, and, accordingly, it is completely devoid of any suggestion to use *deep-sea* water as the same would instantly mix with the surface water (thereby defeating the purpose of the present invention)" (Reply Br. 13).

We do find Appellant's argument persuasive. Meilahn expressly describes the addition of oxygen and air into its tank, e.g., using an oxygen diffuser or an air lift pump (Meilahn, at col. 4, l. 65 to col. 5, l. 30). Thus, the suggestion to aerate deep-sea water is not provided by Puncochar as Appellant contends, but by Meilahn. Puncochar's teaching is relied on to the extent that it describes a specific means for producing air bubbles in water which would have been recognized by persons of skill in the art as an appropriate method to aerate water as suggested by Meilahn. We find no defect in this reasoning. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, 127 S. Ct. at 1739, 82 USPQ2d at 1395. Accordingly, we affirm the rejection of claims 20 and 21.

Rejections over O'Sullivan

Claims 22 and 24 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of O'Sullivan.

Claims 23 and 25 stand rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mougin, Sibinski, Puncoschar, and O'Sullivan.

Claims 22 and 23 are drawn to the swimming pool of claim 8 which further comprises a "means for solar power generation." Claims 24 and 25 are drawn to the swimming pool of claim 8 which further comprises a "means for wind power generation."

The Examiner finds that O'Sullivan "teach[es] the known use of power generation by solar and wind sources to operate domestic and industrial facilities (col. 1, lines 38 through 52)" (Answer 18). The Examiner contends that one of ordinary skill in the art would have been motivated to modify the Meilahn's device to "provide the pool with a renewable energy system capable of use at remote locations and for reducing operating costs" (Answer 18).

Appellant argues there would be no motivation to have utilized O'Sullivan's multi-mode AC power processor "because an AC power source likely would not be available at a 'remote location' and a hybrid energy system is likely to be more expensive than a single source (such as a diesel generator)" (Reply Br. 14-15).

We are not persuaded by Appellant's argument. The Examiner relied upon O'Sullivan for its teaching that solar and wind power generators are well known renewable sources of energy. The Examiner did not rely on the

specific power processor described in O’Sullivan; thus, we do not find Appellant’s remarks address the Examiner’s sound basis for combining the references. Meilahn specifically discloses that its remote aquaculture system can be supported by a service platform comprising generators (Meilahn, at col. 6, ll. 45-51), providing the motivation to have utilized a solar or wind generator which O’Sullivan teaches are known sources of energy for remote locations (O’Sullivan, at col. 1, ll. 15-22). Accordingly, we affirm the rejection of claims 22-25.

Rejections over Atwell

Claim 26 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Atwell.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mougín, Sibinski, Puncóchar, O’Sullivan, and Atwell.

Claims 26 and 27 are drawn to the swimming pool of claim 8, further comprising a sea-water desalination plant.

The Examiner finds that Atwell discloses a desalination system for providing potable water (Answer 20). The Examiner contends that “it would have been obvious to one of ordinary skill in the art of marine structures at the time of invention to further modify the device shown by the combination of Meilahn ... [Iseki, Nomura, and Miyamoto] . . . to provide a potable source of water on the pool structure for consumption (Answer 20).

Appellant contends that “none of the cited art discloses or suggests a deep-sea water swimming pool as claimed herein” (Reply Br. 15).

Atwell was cited for its teaching of a desalination system for providing water, not for teaching a deep-sea swimming pool structure. Thus, Appellant has not identified an error in the rejection and we find none. Accordingly, we affirm the rejections of claims 26 and 27.

Rejections over Rolfson

Claim 28 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Rolfson.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as obvious over Meilahn in view of Iseki, Nomura, and Miyamoto, further in view of Mougín, Sibinski, Puncóchar, O’Sullivan, Atwell, and Rolfson.

Claims 28 and 29 are drawn to the swimming pool of claim 8, further comprising “a check valve which only allows an upward flow of the deep-sea water.”

The Examiner finds that Rolfson teaches a check valve in an air supply tube for restricting the flow of air in one direction (Answer 22). The Examiner contends that it would have been obvious to have included a check valve in the deep-sea water intake valve in view of Rolfson’s teaching that it is “advantageous for use in supply pipes for restricting flow in one direction . . . to prevent the reversal of flow of water” (Answer 22).

Appellant argues that Rolfson’s disclosure is of a valve in an air-supply tube to exclude water from it, not to control the direction of water flow in a water collection pipe (Reply Br. 16).

We are not convinced by this argument. We do not read Rolfson’s disclosure so restrictively. Rolfson’s disclosure is evidence that check

valves were known in the art as a type of valve to restrict flow in only one direction. The Specification's description of a check valve as allowing only upward water flow, without any additional enabling disclosure, indicates that – consistent with Rolfson's teachings – check valves were customarily used in the art to restrict flow of air and water. The modification of Meilahn's pump assembly for drawing and discharging water (Meilahn, at col. 4, ll. 18-35) with a check valve is no more than the addition of a known element for its expected advantage in controlling water flow ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, 127 S. Ct. at 1739, 82 USPQ2d at 1395.

Thus, we affirm the rejections of claims 28 and 29.

Rejection under § 112, first paragraph

Claims 8-29 and 44 stand rejected under § 112, first paragraph, as lacking written description. The Examiner contends that the Specification as originally filed fails to provide support for the newly added limitation "wherein surface[-]seawater and aquatic animals are substantially excluded from said swimming pool structure" (Answer 7-8).

"The purpose of the written description requirement is to prevent an applicant from later asserting that he invented that which he did not; the applicant for a patent is therefore required to 'recount his invention in such detail that his future claims can be determined to be encompassed within his original creation.'" *Amgen Inc. v. Hoechst Marion Roussel Inc.*, 314 F.3d 1313, 1330 [65 USPQ2d 1385] (Fed. Cir. 2003) (citing *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1561 [19 USPQ2d 1111] (Fed. Cir. 1991)).

While there is no requirement that the claimed invention be described in the identical wording that was used in the specification, there must be sufficient disclosure to show one of skill in this art that the inventor “invented what is claimed.” *See Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989, 1000, 54 USPQ2d 1227, 1235 (Fed. Cir. 2000).

In this case, we find that the Specification supports the limitation that surface sea-water is substantially excluded from the swimming pool structure, but does not support the exclusion of aquatic animals.

With respect to the exclusion of surface sea-water, we agree with Appellant that the Specification shows possession of the concept of using only deep-sea water in its swimming pool structure (App. Br. 7-8; Spec. 3: 3-5 (“It is an object . . . to provide a pool on the sea which uses pure and clean deep-sea water.”)) and thus one of skill in the art would recognize that surface-sea water is to be excluded from it. In addition to emphasizing the importance of “pure and clean deep-sea water” free from contaminants (Spec. 11: 13-20), the Specification describes a means for maintaining the supplied deep-sea water “fresh at all times” by continuously feeding deep-sea water into the pool while draining it by pump (Spec. 14: 21-26), indicating that the pool is entirely filled with deep-sea water and thus excludes surface-sea water.

However, we do not find that the Specification supports the newly added limitation of “wherein . . . aquatic animals are substantially excluded from said swimming pool structure.” For support for this claim limitation, Appellant refers to the structure disclosed in Fig. 1 and extensions 10 described on page 14 of the Specification “for frightening away sea animals” such as sharks (App. Br. 8). In each case, the structures referred to in the

Specification are to exclude fish and other animals that live exclusively underneath the water. However, we interpret the phrase “aquatic animals” more broadly to include aquatic living animals, such as aquatic birds (e.g., ducks) that live in aquatic habitats. There is no description in the Specification that aquatic birds be excluded from the pool, or of a structure that would shield the pool from aquatic birds flying in and landing on it. The written description must be of sufficient detail to show possession of the full scope of the invention. *Pandrol USA LP v. Airboss Railway Products Inc.*, 424 F.3d 1161, 1165, 76 USPQ2d 1524, 1527 (Fed. Cir. 2005). Thus, we agree with the Examiner that there is no detailed description to show that Appellant possessed the invention which is now claimed. We affirm the rejection of claims 8 and 44. Claims 9-29 fall with claims 8 and 44 because they were not separately argued.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED

lbg

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